

REMARKS

The Office Communication of September 15, 2006 has been received and reviewed. Claims 20-29 are currently pending in the application and subject to a Restriction Requirement and an Election of Species. (*See*, Office Communication of September 15, 2006, at page 2). New claim 29 has been added herein and is supported by previously presented claim 27. Thus, no new matter has been added to the application by way of this amendment. Applicants traverse, as follows.

Restriction Requirement

In addition to the election of species communicated on July 20, 2006, the Examiner has now decided to issue a Restriction Requirement between Groups I and II as follows:

Group I, claims 20-23 and 28, drawn to a pharmaceutical composition comprising MIP-1 α or a functional derivative thereof; and

Group II, claims 24-27, drawn to a method of elevating a dendritic cell precursor level by administering MIP-1 α or a functional derivative thereof.

The Examiner states that Groups I and II do not relate to a single inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical feature. That this is, the Examiner states, is evidenced by the disclosure of Bernstein et al., who disclose BB-10010. (*Id.* at page 3).

For the purpose of continuing prosecution of the present application, Applicants elect, with traverse, Group II, claims 24-27.

Applicants traverse based on the grounds that the reference upon which the Examiner bases the present Restriction Requirement and upon which the Examiner bases the allegation of a lack of a special technical feature, in fact does not disclose that which is the special technical feature.

Specifically, Bernstein et al. do not disclose that BB-10010 has an activity of “elevating a dendritic cell precursor level in the blood” as presently claimed. Thus, this special technical feature, that MIP-1 α or a functional derivative including BB-10010 elevates a dendritic cell precursor level in the blood, is the discovery upon which the presently claimed invention is based. This discovery is most certainly a special technical feature, not disclosed by Bernstein et al., and which defines a significant contribution over the prior art.

Additionally, Applicants believe that new claim 29 would also be properly included in Group II since new claim 29 is supported by previously presented claim 27 and claim 26, from which claim 27 depends.

Thus, reconsideration and withdrawal of the Restriction Requirement of claims 20-28 are respectfully requested.

Species Election

The Examiner has additionally re-imposed the prior species election of July 20, 2006. (*Id.* at page 3). Applicants’ response to this species election has not changed since their Reply of August 21, 2006.

Again, according to US practice, Applicants reiterate that they understand they must elect a single species for further prosecution. However, once the Examiner finds allowable subject

matter based upon the single species elected, the Examiner is required to then expand the search to include a reasonable number of additional species. As provided in the M.P.E.P. at § 809.02 and as stated by the Examiner:

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

For the purpose of continuing prosecution of the present application, Applicants elect, with traverse, species a) partially alkyl-esterified styrene maleic acid copolymers. Applicants further reiterate that claims 20-28 encompass this species.

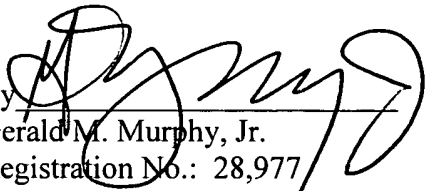
CONCLUSION

If the Examiner has any questions or comments, please contact Thomas J. Siepmann, Ph.D., Registration No 57,374 at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: October 16, 2006

Respectfully submitted,


By
Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicants